



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/376,794	08/18/1999	RAINER KROPKE	BEIERSDORF-5	6931

7590

11/15/2001

KURT G. BRISCOE
NORRIS, MCLAUGHLIN & MARCUS
220 EAST 42ND STREET
30TH FLOOR
NEW YORK, NY 10017

EXAMINER

KISHORE, GOLLAMUDI S

ART UNIT

PAPER NUMBER

1615

DATE MAILED: 11/15/2001

18

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/376,794

Applicant(s)
Kropke

Examiner
Gollamudi S. Kishore, Ph.D

Art Unit
1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Aug 21, 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4-7 and 12-15 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 4-7 and 12-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- *See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 20) ☐ Other:

Art Unit: :1615

DETAILED ACTION

The request for the extension of time, filing under 1.53 (d) and the preliminary amendment dated 8-21-01 are acknowledged.

Claims included in the prosecution are 4-7 and 12-15.

Claim Rejections - 35 U.S.C. § 112

In view of applicant's response agreeing to the examiner definition of the term, the rejection of claims based on the indefiniteness of the term 'tackiness' is withdrawn.

Claim Rejections - 35 U.S.C. § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 4-7 and 12-15 are rejected under 35 U.S.C. 102(b) as being anticipated
FR 2667 072.

FR disclose compositions containing chitosan and phospholipid (note the abstract, Examples on page 11).

Art Unit: :1615

Applicant's arguments have been fully considered, but are not found to be persuasive. The reference teaches the same composition and therefore, the properties of the composition including non-tackiness would be inherent. Applicant has not shown to be otherwise. Instant application contain no data showing the non-tackiness of instant composition. This was pointed out before. Furthermore, nowhere in the disclosure, the reference states that the compositions are tacky.

Claim Rejections - 35 U.S.C. § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 4-7 and 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 0 771 566 or Magdassi or FR 2667 072 cited above.

EP, Magdassi and FR disclose emulsion compositions containing chitosan and phospholipid (note the abstract, Tables and claims of EP; columns 5 and 8 and claims of Magdassi; note Examples on page 11 and the English translation of FR).

EP does not explicitly state the molecular weight and the degree of deacylation. Assuming they are different, the reference clearly teaches that these polysaccharides stabilize the emulsions and that chitosans with different molecular weights and degree Of

Art Unit: :1615

deacylation are readily available in the market (page 2). EP also does not specifically teach that the phospholipids in the composition reduces the tackiness of the composition.

However, as pointed out above, since the compositions are same it would have been obvious to one of ordinary skill in the art that properties including the non-tackiness would be the same.

Similarly Magdassi does not specifically teach the molecular weight and the degree of deacylation. As pointed out above, it is deemed obvious to one of ordinary skill in the art to use a specific chitosan in the teachings of Magdassi with the expectation of obtaining similar results. An artisan would be motivated to use any chitosan since EP shows that these are readily available in the market. Magdassi does not specifically teach that the phospholipids in the composition reduces the tackiness of the composition. However, as pointed out above, since the compositions are same it would have been obvious to one of ordinary skill in the art that properties including the non-tackiness would be the same.

FR does not specifically teach that the phospholipids reduce the tackiness of the composition. However, as pointed out above, since the compositions are same it would have been obvious to one of ordinary skill in the art that properties including the non-tackiness would be the same.

5. Claims 4-7 and 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 0 771 566 or Magdassi or FR 2667 072 cited above, further in view of either JP 63211208 or JP 03074316.

Art Unit: :1615

The teachings of EP, Magdassi and FR which teach emulsions containing the phospholipids and chitosan have been discussed above. It would have been obvious to one of ordinary skill in the art that the compositions of EP, Magdassi and FR are non-tacky since both JP references teach that the phospholipid containing cosmetic compositions are non-sticky (note the abstracts).

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to *G.S. Kishore* whose telephone number is (703) 308-2440.

The examiner can normally be reached on Monday-Thursday from 6:30 A.M. to 4:00 P.M. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, T.K. Page, can be reached on (703)308-2927. The fax phone number for this Group is (703)305-3592.

Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be addressed to [thurman.page@uspto.gov].

All Internet e-mail communications will be made of record in the application file. PTO employees do not engage in Internet communications where there exists a possibility that sensitive information could be identified or exchanged unless the record includes a properly signed express waiver of the confidentiality requirements of 35 U.S.C. 122. This is

Art Unit: :1615

more clearly set forth in the Interim Internet Usage Policy published in the Official Gazette of the Patent and Trademark on February 25, 1997 at 1195 OG 89.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703)308-1235.



Gollamudi S. Kishore, Ph. D

Primary Examiner

Group 1600

gsk

November 15, 2001